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In re Application of : DECISION ON
John W. Wong et al :
Application No.: 09/424,431 :
PCT No.: PCT/US98/10389 : REQUEST UNDER
Int. Filing Date: 22 May 1998 :
Priority Date: 22 May 1997 : 37 CFR 1.48(a)
Attorney Docket No.: 2873-000022/USA :
For: METHOD AND APPARATUS FOR
DELIVERED RADIATION THERAPY DURING
SUSPENDED VENTILATION :

This is a decision on applicants' "Response to Decision on Petition Under 37 CFR 1.48" filed on 09 November 2000, naming an additional inventor in the executed declaration.

BACKGROUND

On 16 March 2000, applicants' response to Notification of Missing Requirements, which was treated as a petition under 37 CFR 1.48(a) to add an inventor was dismissed. The Office's decision mailed on 20 June 2000 stated that the petition lacked requirements (1) and (4) under 37 CFR 1.48(a).

On 09 November 2000, applicants filed the instant renewed request.

DISCUSSION

A petition under 37 CFR 1.48(a) must include:

- (1) a statement from each person being added as an inventor and from each person being deleted as an inventor that the error in inventorship occurred without deceptive intention on his or her part;
- (2) an oath or declaration by the actual inventor or inventors as required by § 1.63 or as permitted by §§ 1.42, 1.43 or 1.47;
- (3) the fee set forth in § 1.17(I); and
- (4) written consent of the assignee in compliance with 37 CFR 3.73(b), if an assignment has been executed by any of the original named inventors.

The 16 March 1999 petition satisfied requirements (2) and (3). The renewed petition has satisfied item (1).

In regards to item (1), the statement submitted on 09 November 2000 by Mr. Musselwhite is sufficient because he states that the error in inventorship occurred without a deceptive intent.

In regards to item (4), although petitioner has supplied a "Copy of the Cover Sheet for Recordal of Document," contrary to Mr. McAskin's statement, no copy of the executed assignment has been submitted with the papers filed. To establish the right of Assignee to take action, petitioner must submit a copy of the executed assignment or specify the reel and frame number. Furthermore, such submission must be signed by a party authorized to act on behalf of the assignee. Note MPEP 324 and 37 CFR 3.73(b).

Accordingly, the applicants are deemed not satisfy requirement (4) under 37 CFR 1.48(a).

Finally, the "Revocation of Power of Attorney and New Power of Attorney" filed on 09 November is ineffective because petitioner has not established the right of the Assignee to take action in this application for reasons indicated above.

CONCLUSION

For the reasons above, the request under 37 CFR 1.48(a) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper reply must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Request Under 37 CFR 1.48". No additional petition fee is required. Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to the Commissioner for Patents, Office of PCT Legal Administration, Box PCT, Washington, D.C. 20231, with the contents of the letter marked to the attention of the PCT Legal Office..



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